

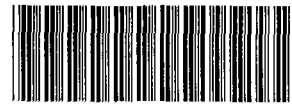
RENZ D. JENNINGS
CHAIRMAN

MARCIA WEEKS
COMMISSIONER

CARL J. KUNASEK
COMMISSIONER



ARIZONA CORPORATION COMMISSION



0000000279

DATE: August 2, 1996

DOCKET NO: U-3006-95-342

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Scott S. Wakefield. The recommendation has been filed in the form of an Opinion and Order on:

Metropolitan Fiber Systems of Arizona, Inc. (CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 5:00 p.m. on or before:

August 12, 1996

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

August 20, 1996 and August 21, 1996

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.


James Matthews
EXECUTIVE SECRETARY

JM
Enc.
cc: ALL PARTIES

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 RENZ D. JENNINGS
CHAIRMAN
3 MARCIA WEEKS
COMMISSIONER
4 CARL J. KUNASEK
COMMISSIONER
5

6 IN THE MATTER OF THE APPLICATION OF)
METROPOLITAN FIBER SYSTEMS OF)
7 ARIZONA, INC. FOR A CERTIFICATE OF)
CONVENIENCE AND NECESSITY TO)
8 PROVIDE INTRASTATE PRIVATE LINE)
TELECOMMUNICATIONS SERVICES)
9 WITHIN THE EXCHANGES CURRENTLY)
SERVED BY U.S. WEST COMMUNICATIONS,)
10 INC.)

DOCKET NO. U-3006-95-342

DECISION NO. _____

11 **OPINION AND ORDER**

12 DATE OF HEARING: July 19, 1996

13 PLACE OF HEARING: Phoenix, Arizona

14 PRESIDING OFFICER: Scott S. Wakefield

15 APPEARANCES: Mr. Morton J. Posner, SWIDLER & BERLIN CHTD., on behalf of
Metropolitan Fiber Systems of Arizona, Inc.;

16 Mr. Gary L. Lane, Corporate Counsel, on behalf of U S WEST
COMMUNICATIONS, INC.; and

17 Mr. Bradford Borman and Ms. Deborah Scott, Staff Attorneys, Legal
18 Division, on behalf of the Utilities Division of the Arizona Corporation
Commission.

19 **BY THE COMMISSION:**

20 **FINDINGS OF FACT**

21 1. Metropolitan Fiber Systems of Arizona, Inc. ("MFS-AZ" or "Applicant") is a Delaware
22 corporation authorized to do business in Arizona.

23 2. On July 29, 1995, MFS-AZ filed with the Arizona Corporation Commission
24 ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate" or
25 "CC&N") to provide intrastate private line telecommunications services in the exchanges currently
26 served by U S West Communications, Inc. ("U S West") in Arizona ("Application"). In its Application,
27 MFS-AZ requested that the services it intends to provide be considered "competitive" pursuant to A.A.C.
28 R14-2-1108.

1 3. On August 9, 1995, U S West filed a request to intervene in this matter which was
2 approved on August 28, 1995.

3 4. On September 27, 1995, Applicant had notice of its Application published in a newspaper
4 of general circulation in the State of Arizona.

5 5. On June 25, 1996, the Commission's Utilities Division Staff ("Staff") filed its Staff
6 Report, which recommended approval of the Application as well as a number of additional
7 recommendations.

8 6. On June 27, 1996, the Commission issued a Procedural Order setting the hearing for July
9 19, 1996.

10 7. The hearing was held as scheduled and Applicant and Staff presented evidence.

11 8. MFS-AZ is wholly owned by MFS Communications Company, Inc. ("MFSCC"), which
12 recently issued senior discount notes to raise approximately \$600 million and made a stock offering to
13 raise \$1.28 billion.

14 9. MFSCC operates, through its subsidiaries, telecommunications networks in twenty-six
15 major metropolitan areas, including Phoenix. In four of the twenty-three states where MFSCC provides
16 services, it provides facilities-based local exchange service.

17 10. MFS-AZ is currently providing interstate private line and non-switched access services
18 to several large business customers in the Phoenix area.

19 11. MFS-AZ owns a 10 mile fiber optic ring in the downtown Phoenix area.

20 12. Applicant has the technical capability to provide the services it proposed in its
21 Application.

22 13. Applicant has the financial resources to provide the services it proposed in its Application.

23 14. Currently, U S West provides approximately 100 percent of the intrastate private line
24 telecommunication services within the service territory requested by MFS-AZ.

25 15. In addition to U S West, MFS-AZ will have to compete with AT&T Communications of
26 the Mountain States, Inc., MCI Telecommunications Corporation and Sprint Communications Company
27 in the provision of intrastate private line telecommunication services.

28 16. In addition to recommending approval of the Application, Staff recommended that:

- (a) MFS-AZ pursue contractual number portability arrangements with other local exchange carriers until such time as interim and/or permanent number portability are established by rule;
 - (b) MFS-AZ be required to certify that all issues associated with the provision of 911 service have been resolved with the emergency service providers before it begins to provide service;
 - (c) MFS-AZ be required to abide by all the Commission decisions and policies regarding SS7 and CLASS features; and
 - (d) MFS-AZ's intrastate private line telecommunications services be classified as competitive.
17. Staff's recommendations, as set forth in Finding of Fact No. 16, are reasonable.

CONCLUSIONS OF LAW

1. MFS-AZ will be a public service corporation within the meaning of Article XV of the Arizona Constitution.
2. The Commission has jurisdiction over Applicant and of the subject matter of the Application.
3. Notice of the Application was given in accordance with the law.
4. A.A.C. R14-2-1105 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.
5. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Telecommunications Service Rules, A.A.C. R14-2-1101 et seq. ("Competitive Rules"), it is in the public interest for Applicant to provide the telecommunications services set forth in its Application.
6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide intrastate private line telecommunications services within the exchanges currently served by U S West.
7. Pursuant to A.A.C. R14-2-1108, the intrastate private line telecommunications services which Applicant intends to provide are competitive within the exchanges currently served by U S West.
8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges which are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.
9. Staff's recommendations, as set forth in Finding of Fact No. 16, are reasonable and should

1 be adopted.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the Application of Metropolitan Fiber Systems of Arizona,
4 Inc. for a Certificate of Convenience and Necessity to provide intrastate private line telecommunications
5 services within the exchanges currently served by U S West Communications, Inc., be, and hereby is,
6 granted.

7 IT IS FURTHER ORDERED that Metropolitan Fiber Systems of Arizona, Inc.'s petition to
8 determine that its private line telecommunications services are competitive is hereby approved.

9 IT IS FURTHER ORDERED that on or before August 30, 1996, Metropolitan Fiber Systems of
10 Arizona, Inc. shall file a tariff for the private line telecommunications services approved herein which
11 sets forth maximum rates and charges as well as the current rates and charges which are not less than
12 Metropolitan Fiber Systems of Arizona, Inc.'s total service long-run incremental cost of providing the
13 service.

14 IT IS FURTHER ORDERED that the rates and charges authorized herein shall be effective for
15 all service rendered on and after September 1, 1996 until the Commission is notified in writing of a price
16 change which is below the maximum tariffed rate and which is consistent with the requirements of
17 A.A.C. R14-2-1109.

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1 IT IS FURTHER ORDERED that Metropolitan Fiber Systems of Arizona, Inc. shall comply with
2 Staff's recommendations as set forth in Finding of Fact No. 16 (a), (b), and (c).

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6 CHAIRMAN

COMMISSIONER

COMMISSIONER

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8 IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the
9 Arizona Corporation Commission, have hereunto set my hand and caused the
10 official seal of the Commission to be affixed at the Capitol, in the City of
11 Phoenix, this _____ day of _____, 1996.

12 JAMES MATTHEWS
EXECUTIVE SECRETARY

13 DISSENT _____
14 SSW/kjh
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1 SERVICE LIST FOR: METROPOLITAN FIBER SYSTEMS OF ARIZONA, INC.

2 DOCKET NO.: U-3006-95-342

3 Russell M. Blau
4 Morton J. Posner
5 SWIDLER & BERLIN CHTD.
3000 K Street, N.W., Suite 300
Washington, DC 20007

6 Robert Munoz
7 Manager, Regulatory Affairs - Western Region
8 MFS COMMUNICATIONS COMPANY, INC.
185 Berry Street, Bldg. 1
Suite 5100
San Francisco, California 94107

9 Gary L. Lane
10 U S WEST COMMUNICATIONS, INC. - Law Department
5090 North 40th Street, Room 425
11 Phoenix, Arizona 85018

12 Susanne Mason
13 U S WEST COMMUNICATIONS, INC.
3033 North 3rd Street, Room 1010
Phoenix, Arizona 85012

14 Paul A. Bullis, Chief Counsel
15 Bradford Borman, Staff Attorney
16 Deborah Scott, Staff Attorney
Legal Division
ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
Phoenix, Arizona 85007

18 Gary Yaquinto, Director
19 Utilities Division
ARIZONA CORPORATION COMMISSION
20 1200 West Washington Street
Phoenix, Arizona 85007